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5 Attorneys for Defendants UNITED AGRI PRODUCTS, INC., and UAP DISTRIBUTION, INC.

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IN THE UNITED STATES DISTRICT COURT

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NORTHERN DISTRICT OF CALIFORNIA

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11

12 KEN KUNZLER

13 Plaintiff,

14 v.

15 UNITED AGRI PRODUCTS, INC., UAP
16 DISTRIBUTION, INC., and DOES 1 through
25, inclusive,

17 Defendants.

18 **SCUK CVPO 07-3555****NOTICE OF REMOVAL OF ACTION
UNDER 28 U.S.C. §§ 1441, 1332
(DIVERSITY OF CITIZENSHIP)**

19 Complaint Filed: May 2, 2007

20 Trial Date: None Set

TO THE CLERK OF THE ABOVE-ENTITLED COURT:21 PLEASE TAKE NOTICE that Defendants United Agri Products, Inc. and UAP
22 Distribution, Inc. (hereinafter collectively "UAP") hereby remove to this Court the state court
23 action described below and respectfully show upon information and belief:24 1. On or about May 2, 2007, this action, entitled *Ken Kunzler v. United Agri Products,*
25 *Inc., UAP Distribution, Inc., and Does 1 through 25, inclusive* (Case No. SCUK CVPO 07-
26 99081), was commenced in the Superior Court of the State of California in and for the County of
27 Mendocino (hereinafter "the State Court Action"). A First Amended Complaint for Damages was
28 subsequently filed on June 25, 2007. True and correct copies of the Summons, Complaint for
Damages, second Summons, and First Amended Complaint for Damages by Kunzler are attached

02 JUL 10 PM 12:38
 RICHARD W. WILKING
 CLERK, U.S. DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA

EMC

1 as Exhibits "A," "B," "C," and "D," respectively, to the Declaration of Marisa M. Yee, filed
2 concurrently herewith. The only other document in the file of the State Court Action is a Notice
3 of Delay Reduction Rules and Case Management Conference, a true and correct copy of which is
4 attached as Exhibit "E" to the Declaration of Marisa M. Yee, filed concurrently herewith.

5 2. The Summons, Complaint for Damages, second Summons, and First Amended
6 Complaint for Damages have not formally been served on UAP in connection with this matter.
7 However, counsel for UAP received an unsigned copy of the original Complaint for Damages via
8 electronic mail from counsel for Kunzler on June 12, 2007. A true and correct copy of the
9 electronic mail message and unsigned Complaint for Damages attached to the electronic mail
10 message are attached as Exhibit "F" to the Declaration of Marisa M. Yee, filed concurrently
11 herewith.

12 3. This action is a civil action of which this Court has original jurisdiction over this
13 matter pursuant to 28 U.S.C. § 1332, thus making removal permissible under 28 U.S.C. §§
14 1441(a) and (b) and 1446, because it is a civil action between citizens of different states, and,
15 based on specific averments in the First Amended Complaint for Damages, UAP reasonably
16 believes that the amount in controversy exceeds the required jurisdictional amount (\$75,000),
17 including alleged actual damages. Specifically, Plaintiff claims an entitlement to \$194,310.00.
18 See Exhibit "C" ¶10.

19 4. According to the Complaint, Plaintiff Ken Kunzler is a resident and citizen of
20 California. See Exhibit "C" ¶1.

21 5. Both at the time of commencement of the State Court Action and at the time of the
22 filing of this Notice of Removal, Defendants United Agri Products, Inc. and UAP Distribution,
23 Inc. were and are corporations organized and existing under the laws of the State of Delaware, and
24 their principal places of business were and are in Greeley, Colorado. See Declaration of Marisa
25 Yee ¶¶ 2-5.

26 6. There have been no further proceedings in the State Court Action, and copies of all
27 documents filed in that matter are attached hereto.

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7. Pursuant to 28 U.S.C. § 1446(d), UAP is serving a copy of this Notice of Removal on all adverse parties, and will promptly provide notice of the filing of this Notice of Removal to the Clerk of Court of the State of California, County of Mendocino.

8. This Notice of Removal is timely, pursuant to 28 U.S.C. § 1446(b), because it is being filed within thirty days of the receipt by counsel for UAP of a copy of the initial pleading setting forth the claim for relief.

INTRA-DISTRICT ASSIGNMENT

9. Pursuant to Local Rules 3-2 and 3-5, this is a civil action that arose in the County of Mendocino, California, and is being removed from the Superior Court of the State of California for the County of Mendocino. Under Local Rule 3-2(d), this action may be assigned to the San Francisco Division or to the Oakland Division.

WHEREFORE, Defendants United Agri Products, Inc. and UAP Distribution, Inc. pray that the action now pending against them in the Superior Court of the State of California, in and for the County of Mendocino, described above, be removed to this Court and proceeded therein.

Respectfully Submitted,

Dated: July 9, 2007

LEWIS BRISBOIS BISGAARD & SMITH, LLP

By:

Shawn A. Toliver
Marisa M. Yee
Attorneys for Defendants United Agri Products, Inc.
and UAP Distribution, Inc.